Operations Other Than War (Peace Operations) and Coalition Operations

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AF Judge Advocate General School

OVERVIEW

- **PEACE OPERATIONS**
- **HUMANITARIAN & DISASTER OPERATIONS**
- **COALITIONS**

PEACE OPERATIONS

PEACE OPERATIONS

- **A new mission for the US military**
  - **Very new for the United States**
  - **Not so new for many allies**
- **Active area**

ONGOING PEACEKEEPING MISSIONS
MINURSO
1991 -
UNMIBH
1995 -
UNMOP
1996 -
UNMIK
1999 -
UNIFIL
1978 -
UNOMIG
1993 -
UNMOT
1994 -
UNIKOM
1991 -
UNMOGIP
1949 -
UNTAET
1999 -
UNFICYP
1964 -
UNAMSIL
1998 -
MONUC
1999 -
UNTSO
1948 -
UNDOF
1974 -
As of April 2000
Map No. 4000 Rev. 14 UNITED NATIONS
April 2000
Department of Public Information
Cartographic Section

Difficulty Posed By Peace Ops

Historical Perspective

- UN Charter drafted against WWII backdrop
- “Cold” War begins after WWII
- East-West Confrontation through 1980’s limited UN’s usefulness
- In 1990’s, US position on international activities increases reliance on UN
- Circumstances allow for increased involvement by the UN, thus ….

PEACE OPERATIONS

- **United Nations' Charter primary authority for peace operations**
  - **With Security Council Resolutions**

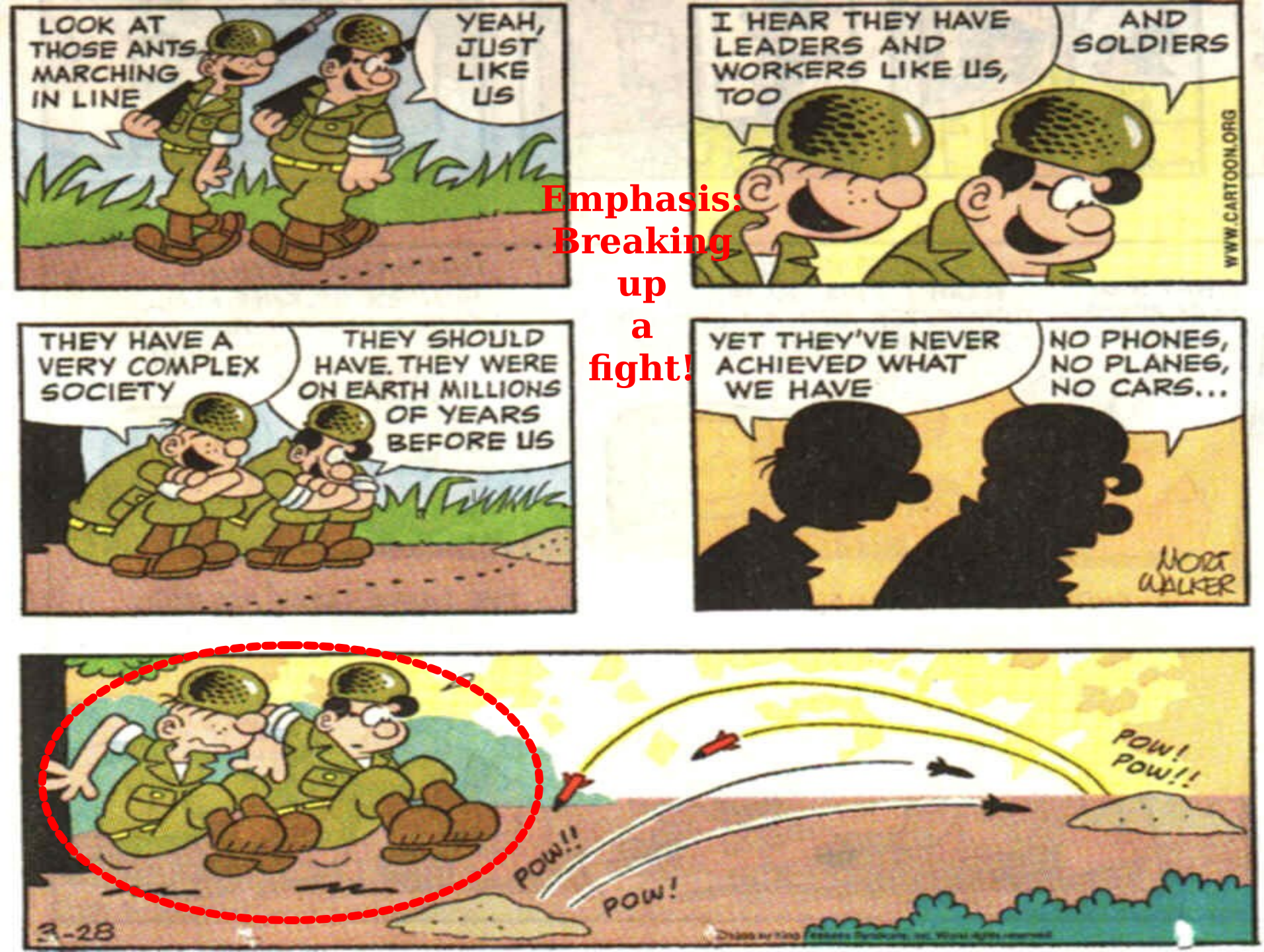
What is a "peace operations"?

PEACE OPERATIONS

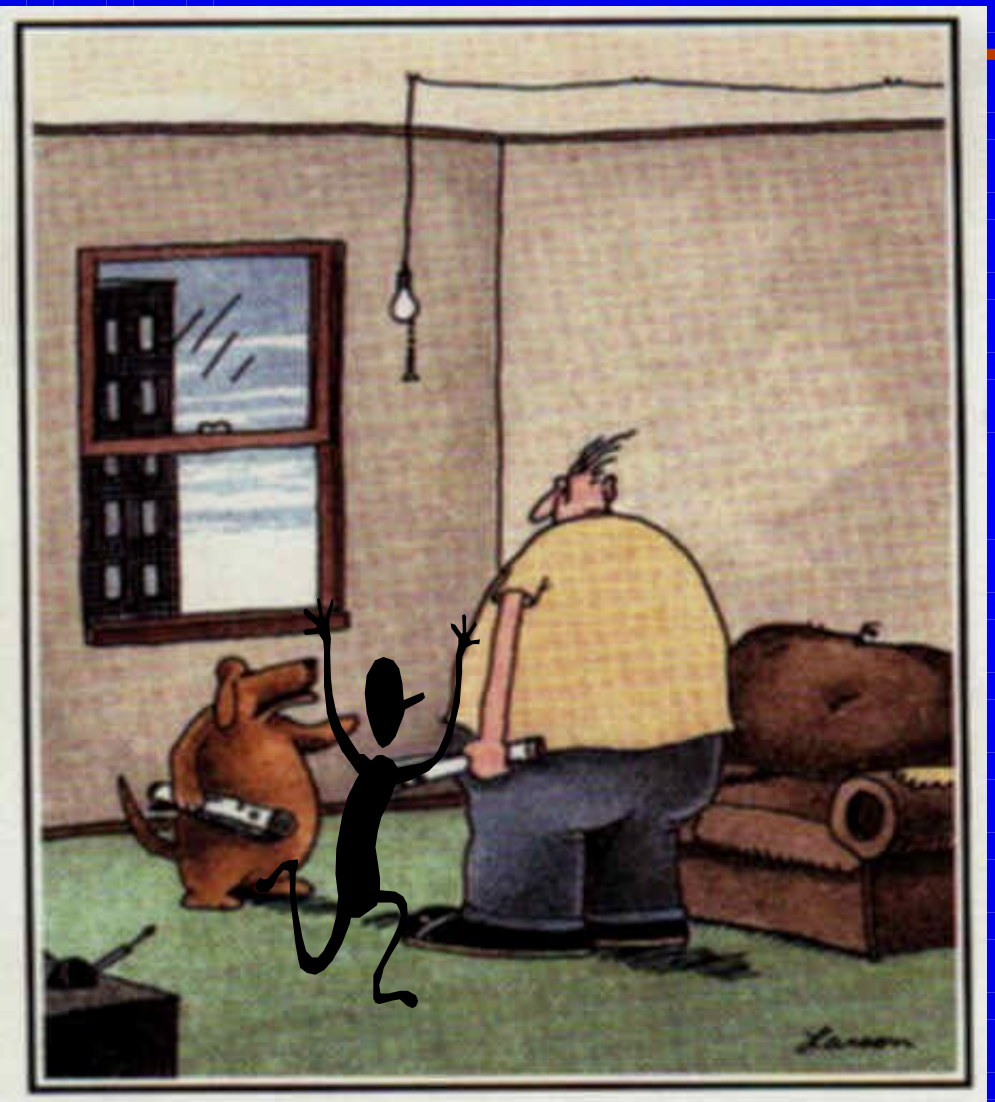
- **Peace Operations: A broad term that encompasses peacekeeping operations and peace enforcement operations conducted in support of diplomatic efforts to establish and maintain peace**
  - **Diplomatic**
    - **Peacemaking/peace building**
  - **Military**
    - **Peacekeeping**
    - **Peace enforcement**

PEACE OPERATIONS

- **A "pure" Peace Enforcement = Application of military force, or the threat of its use, normally pursuant to international authorization, to compel compliance with resolutions or sanctions designed to maintain or restore peace and order**


LOOK AT THOSE ANTS MARCHING IN LINE
YEAH, JUST LIKE US
I HEAR THEY HAVE LEADERS AND WORKERS LIKE US, TOO
AND SOLDIERS
WWW.CARTOON.ORG
Emphasis: Breaking up a fight!
THEY HAVE A VERY COMPLEX SOCIETY
THEY SHOULD HAVE. THEY WERE ON EARTH MILLIONS OF YEARS BEFORE US
YET THEY'VE NEVER ACHIEVED WHAT WE HAVE
NO PHONES, NO PLANES, NO CARS...
MORT WALKER
POW!!
POW!
POW! POW!!
3-28

PEACE OPERATIONS



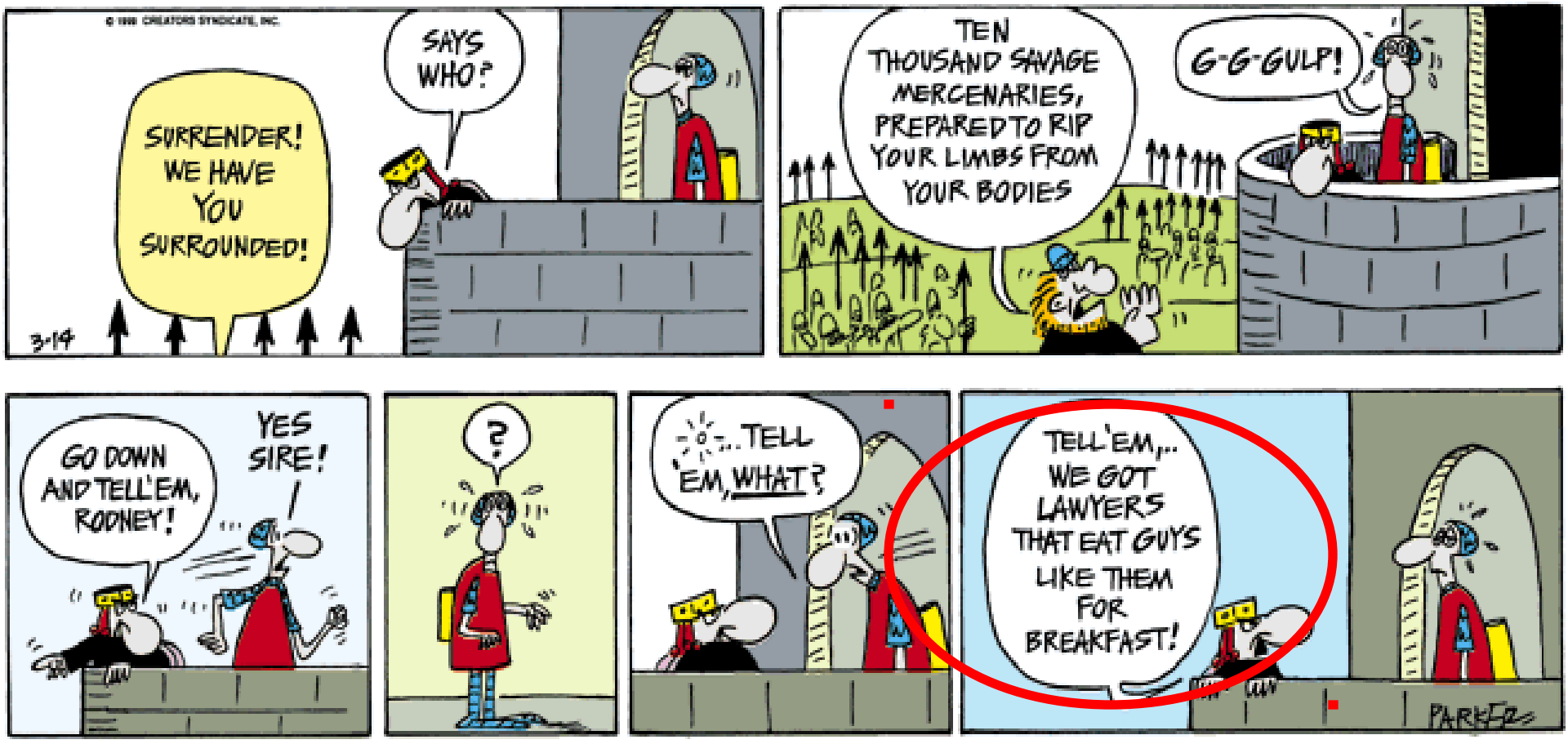
"No way. I'll put *my* magazine down when you put yours down."

- **Peacekeeping = Military operations undertaken with consent of all major parties to a dispute, designed to monitor and facilitate implementation of an agreement (cease-fire, truce, etc) and support diplomatic efforts to reach a long-term political settlement**

THE MISSION

GOAL #1: Settlement, not victory on battlefield

GOAL #2: Create/sustain conditions conducive to peace


SURRENDER! WE HAVE YOU SURROUNDED!
SAYS WHO?
TEN THOUSAND SAVAGE MERCENARIES, PREPARED TO RIP YOUR LIMBS FROM YOUR BODIES
G-G-GULP!
GO DOWN AND TELL 'EM, RODNEY!
YES SIRE!
?
...TELL 'EM, WHAT?
TELL 'EM,.. WE GOT LAWYERS THAT EAT GUYS LIKE THEM FOR BREAKFAST!

PEACE OPERATIONS

- **United Nations' Charter**
  - **Chapter VI: "Pacific Settlement of Disputes"**
    - **Chapter VI constantly cited for peacekeeping**
  - **Chapter VII: "Actions with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression"**
    - **Chapter VII constantly cited for peace enforcement**

CHAPTER VI

Articles 33 - 38

- **The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice (Art. 33)**
  - **Should the parties to a dispute fail to settle it, they shall refer it to the Security Council**
  - **If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to [recommend appropriate procedures or methods of adjustment, take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties, and keep in mind legal disputes should be referred by the parties to the International Court of Justice], or recommend such terms of settlement as it may consider appropriate (Art. 37)**

CHAPTER VI

Articles 33 - 38

- **Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, <u>make recommendations</u> to the parties with a view to a pacific settlement of the dispute (Art. 38)**

- **BOTTOMLINE: No specific provisions for deployment of peacekeeping forces, but peacekeeping "pigeon-holed" in Chapter VI and internationally recognized**

CHAPTER VII

Articles 39 - 51

- **UN Security Council can maintain international peace by taking "such action by air, sea or land forces as may be necessary"**
  - **UN Charter does not authorize the UN to intervene in domestic affairs, "but this principle shall not prejudice the application of enforcement measures under Chapter VII" (Art. 2(7))**

CHAPTER VII

Articles 39 - 51

- **UN members obligated to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security (Art. 43(1))**
  - **The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes (Art. 43(3))**
- **For <u>urgent</u> military measures members states "shall hold immediately available national air-force contingents for combined international enforcement action" (Art. 45)**
- **Variety of options available pursuant to Chapter 7**

CHAPTER VII - Examples

- **Gulf War**
- **Enforcement of Human Rights Provisions**
- **International Criminal Tribunals**
- **Safe Havens for Fleeing Refugees**
- **Election Monitoring**
- **Nonproliferation Monitoring**
- **Nation Building**

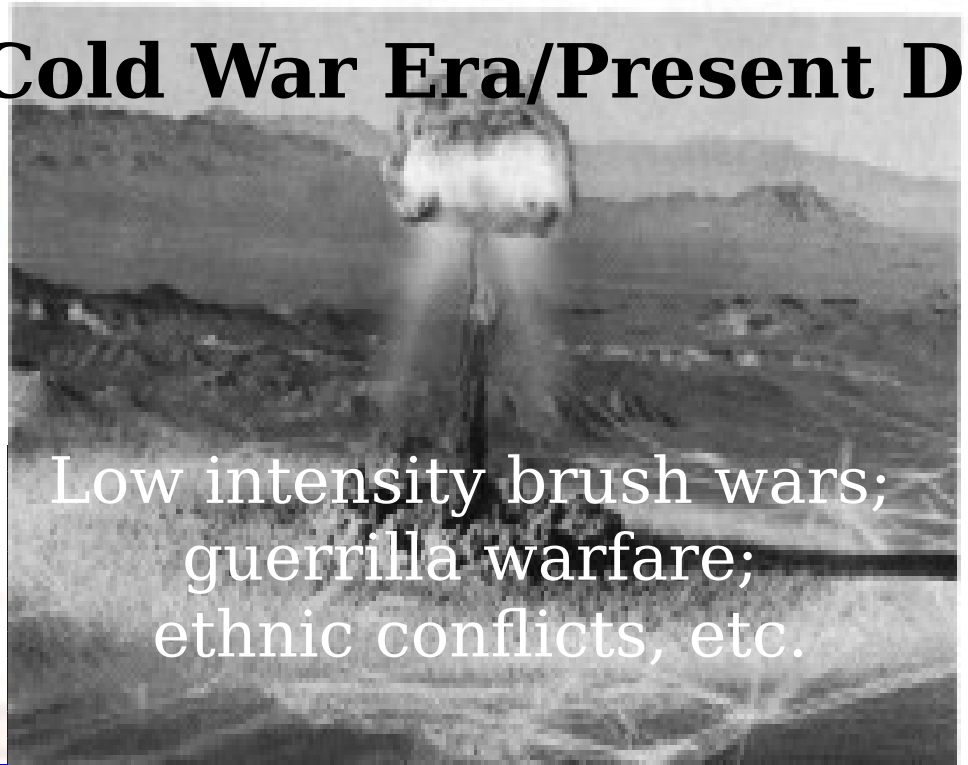
NOTE: Since the early 1990s, 17 of the last 20 or so UN operations were authorized per Chapter VII

PEACE OPERATIONS

- **United Nations' Charter**
  - **In 1945, none of present-day actions contemplated**
  - **Chapters VI and VII = best legal authority available**

Pre-Cold War

Cold War Era/Present D



LEGAL ISSUES & CONCERNS

- **Starting Point - Type of Mission**
  - **What's the mandate? What's the mission?**
    - **Peacekeeping?**
    - **Peace Enforcement?**
- **This defines the parameters of the operation, force composition, ROE, status governing fiscal authority, etc.**

LEGAL ISSUES & CONCERNS

- **UN Mandate**
  - **Political document often imprecise**
- **JCS Execute/Warning Order**
  - **Primary source for defining mission - usually reflects UN Mandate**

LEGAL ISSUES

- **Chain of Command**
  - **Chapter VI**
    - **Security Council**
    - **Secretary General**
    - **Force CC**
  - **Chapter VII**
    - **Security Council provides direction**
    - **Command & Control remains with national participants**

LEGAL ISSUES

- **Applicable law?**
  - **US (examples)**
    - **UN Participation Act (22 USC 287) authorizes no more 1000 troops to act as guards, observers or any non-combatant role; not an authorization for Chapter 7 operations**
    - **Fiscal support (22 USC 2357 & 2388)**
      - **Services and commodities may be given to international agencies, provided it is consistent with Foreign Assistance Act (FAA)**
      - **USG personnel may be assigned to international agencies, provided it is consistent with FAA**
    - **Can't use DOD funds to make a financial contribution to UN for costs of peacekeeping or arrearages per 10 USC 405**
    - **Need to have general awareness of fiscal laws**

LEGAL ISSUES

- **Law of Country where Peace Operation occurs**
  - **Problem is if "country" identity is issue (Somalia)**
- **International Law**
  - **United Nations Law**
    - **UN Charter provisions**
    - **Security Council Resolutions (are binding)**
      - **UNSCR 678, 29 Nov 90: authorized "all necessary means" to restore Kuwait's sovereignty**
      - **UNSCR 794, 3 Dec 92: authorized "all necessary means" to establish a secure environment for humanitarian relief operations in Somalia**

LEGAL ISSUES

- **International Law (Con'd)**
  - **Status of Forces Agreements (SOFAs)**
  - **Status of Mission Agreements (SOMAs)**
    - **Peace enforcement does not depend on, and therefore will not normally have a SOFA/SOMA**
    - **All others should have SOFA/SOMA/Diplomatic Note/ Other Agreement protecting forces (prerequisite)**
  - **The Law of Armed Conflict?**
    - **Only applies during international armed conflict between countries?**
      - **Common Article 3 of Geneva Conventions**
    - **Affect of Additional Protocols?**

GENEVA CONVENTION COMMON ARTICLE 3

- **Applies to non-international conflicts**
- **Each party to Geneva Conventions must:**
  - **Treat <u>all</u> non-combatants humanely:**
    - **No violence to life and person**
    - **No taking of hostages**
    - **No outrages upon personal dignity**
    - **No sentences and executions without a fair trial**
    - **Collect and care for wounded and sick**

ADDITIONAL PROTOCOL II

- **Applies provisions of Geneva Conventions to non-international conflicts (civil wars)**
- **United States has not ratified**
- **Between a party's armed forces and opponents that are:**
  - **Under responsible command and…**
  - **Exercise control over a part of territory as to enable them…**
  - **To carry out sustained and concerted military operations, and…**
  - **To implement Additional Protocol II**

LEGAL ISSUES

- **UN position - peace operations:**
  - **Chapter VI operations = int'l armed conflict.**
  - **Chapter VII operations may/may not be deemed int'l armed conflicts depending on the situation**
- **UN position - peacekeepers status - "experts on mission"**
  - **Can't be fired upon; Can't be kept prisoner; If taken, must be released immediately**
  - **Rationale: UN Charter obligates member nations to obey UN Security Council Resolutions**
  - **Fall back position: Geneva Convention for PW applies**
- **Sec-Gen Annan announced UN operations would be governed like US forces; adopted US policy re LOAC**

LEGAL ISSUES

- **US: strict construction of Geneva conventions - LOAC applicable for "international armed conflicts," though US may apply the spirit of LOAC to other situations**
- **US policy is that we will comply with the principles and spirit of the law of war during [operations other than war], unless otherwise directed by competent authority (CJCSI 5810.01, para. 5(a))**

LEGAL ISSUES - ROEs

- **Peacekeeping**
  - **Legal authority: UN Charter, Chapter VI**
  - **Legal consent of warring parties to be placed between warring parties**
  - **Rules of Engagement: Based upon self-defense**
- **Peace Enforcement**
  - **Legal authority: UN Charter, Chapter VII**
  - **Legal consent of warring parties NOT required**
  - **Rules of Engagement: Based on need to FORCE a peace through offensive actions - need for expanding ROE**

LEGAL ISSUES

- **Mission Creep**
  - **Changed Mission - Chapter VI to VII or vice versa**
  - **Attempting to do more than is allowed - also a fiscal problem**
- **Real world problem: peacekeeping or peace enforcement?**
  - **Is it a Chapter 6 or Chapter 7 operation?**
  - **Or is it really a Chapter 6.5 operation?**

LEGAL ISSUES

- **The laws applicable to “Peace Operations” is constantly changing because situations are constantly changing**

- **Fluid; need to be flexible**

HUMANITARIAN ASSISTANCE & DISASTER RELIEF

CHANGING TIMES

THEN: **"THE LAW OF WAR RECOGNIZES THAT THE PURPOSE OF THE MILITARY IN WARTIME IS KILLING PEOPLE AND BREAKING THINGS"**

Legal Advisor to the Chairman, JCS
1972-73

NOW: "IT SEEMS TO ME THAT KILLING PEOPLE AND BREAKING THINGS HAS GIVEN WAY TO FEEDING PEOPLE AND FIXING THINGS"

Legal Advisor to the Chairman, JCS
1993

& Foreign Disaster Assistance

- **Recognized as Operations Other Than War**
  - **Army FM 100-5, Chapter 13**
  - **Joint Pub 3-07**
- **Scenarios:**
  - **UN coordinated efforts**
  - **US participation with other national forces**
  - **US acts unilaterally**
- **Big legal issues = fiscal concerns**
  - **Identify type of operation**
  - **Ensure use of proper appropriatio**

FUNDING SOURCES

- **Title 22 - Primary source of money**
  - **State Department typically runs authorized programs as part of US' foreign assistance aid**
    - **Foreign Operations Appropriation Act**
    - **Development Assistance (DA) Fund**
    - **Economic Support Fund (ESF)**
    - **Foreign Assistance Act (FAA) - Disaster Assistance**
  - **Administered by U.S. Agency for International Development (USAID) [there are other agencies]**

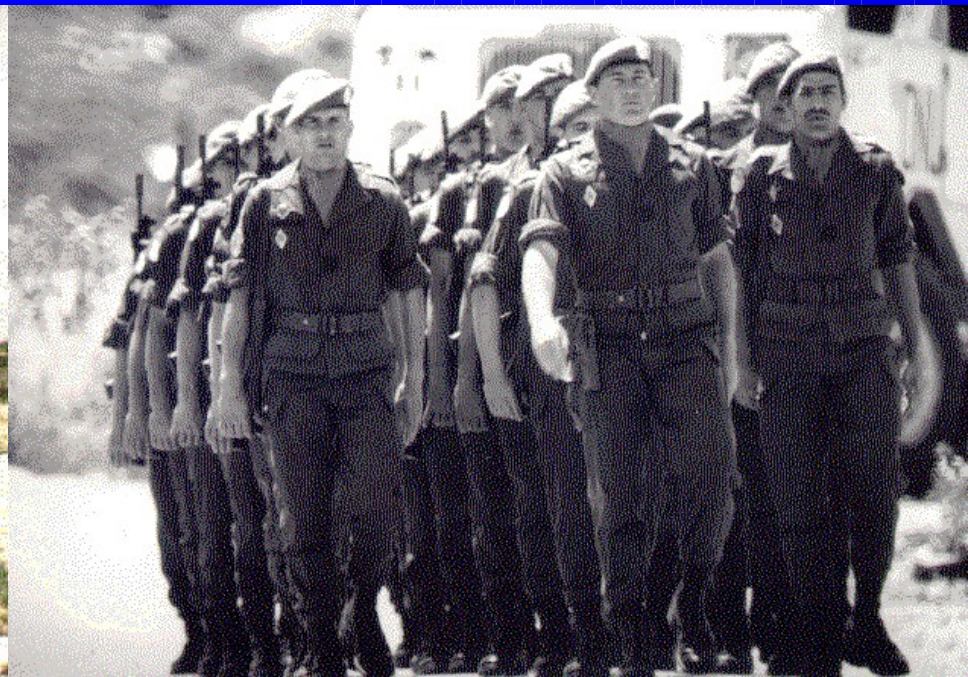
FUNDING SOURCES

- **Title 10 money available as well**
  - **DoD O&M Funds specifically appropriated for Humanitarian, Disaster or Civic Assistance (In FY97 - $50M appropriated)**
  - **Operational & Maintenance (O&M) Funds**
    - ***De minimus***
  - **SecDef Contingency Funds (not guaranteed)**
  - **CINC Contingency Funds (not guaranteed)**

LEGAL ISSUES

- **LOAC???**
- **ROEs or use of force rules????**
- **Status of host country personnel????**
- **WATCH FOR MISSION CREEP!!!!!!**

MULTINATIONAL (COALITION) OPERATIONS



MULTINATIONAL OPERATIONS

- **The *method* for conducting peace operations and many humanitarian & disaster relief operations**
- **FYI: NEOs are normally not coalition operations**

MULTINATIONAL OPERATIONS

- **Multinational Operation is one where the military forces from 2 or more nations are taking part**
- **A *Coalition*" may be:**
  - **An *ad hoc* team established by nations that have formed a short-term, focused purpose (Gulf War), or**
  - **A long term alliance to address a long-term threat (N.A.T.O.)**
- **Coalition warfare is THE method of military operations for peace operations after the "Gulf War"**
- **Recently, the *UN* has emerged as the preferred entity for creating and guiding global coalitions for all types of military operations**

COALITION OPERATIONS

- **Historical perspective:**
  - **Despite being viewed as a current trend, coalition operations are deeply rooted in history**
  - **As early as 480 B.C. city-states in ancient Greece formed coalition military forces to protect their homeland**
    - **Thucydides-The Peloponnesian War**
    - **Napoleonic Wars-The Grand Coalitions arrayed against Napoleon**

COALITION OPERATIONS

- **PURPOSE of a *"Coalition"***
  - **To demonstrate multinational and global unity; consensus; political legitimacy**
    - **Important!**
  - **To enhance combat power in military operations**

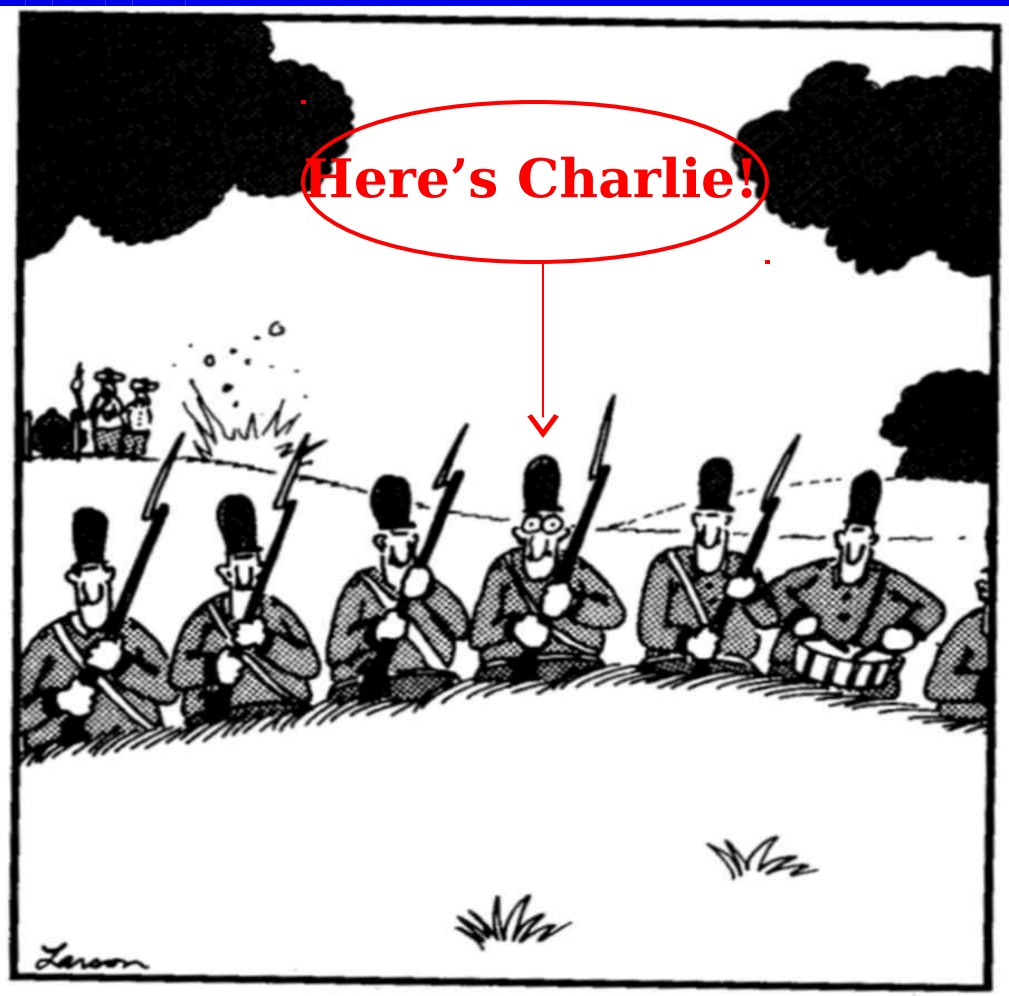
TYPES

- **Hostilities**
- **MOOTW**
  - **Terrorism**
  - **Maritime Intercept**
  - **Peace Operations**
  - **Humanitarian and Disaster Assistance**
  - **Freedom of Navigation & overflight**
  - **etc.**

COALITION OPERATIONS

- Operational Issues:
  - Command and Control
    - Unity of command is fundamental
    - Many nations reluctant to subordinate military to other nation (symbolic issue)
    - The ultimate statement of trust from one nation to another (lives and materials at stake)

COALITION OPERATIONS



Bunker Hill, June 17, 1775: An unfortunate twist of fate for one young Redcoat, Charles "Bugeyed" Bingham, was not knowing that the opposing American general had just uttered the historic command, "Don't fire until you see the whites of their eyes."

- Operational Issues:
  - Command and Control
    - Communication is key
      - Ability to share info
      - Ability to receive info from the field
    - Account for language differences by having translators available at all levels
    - Understanding basic military terms (develop a coalition military dictionary)

COALITION OPERATIONS - LEGAL ISSUES

COALITION OPERATIONS - LEGAL ISSUES

- LOGISTICS (rapport/mutual support)
  - Need legal authority for:
    - Host nation agreements
      - Drinking water, fuel storage, shelter, food
    - Open Market contracting
      - Most nations will have infrastructure only capable of supplying local needs. Re-supplying military troops could cause local food shortages and inflation
    - Bi-National Agreements
      - Coalition partners agree to supply each other
      - Planners need to insure partners' domestic law allows such transactions

COALITION OPERATIONS - LEGAL ISSUES

- CULTURAL/PRACTICAL DIFFERENCES:
  - At outset of mission, may only seem to be minor; however, they can become a major negative impact upon mission
    - Who, how, and when transactions occur
      - Officer to officer
    - Women in the force; legal status
    - Religious customs, practices and holy days
    - Role of the media
      - US law and freedom of the press

COALITION OPERATIONS - LEGAL ISSUES

- DISCIPLINE AND PUNISHMENT:
  - Standard Operating Procedure
    - Force Commander has centralized military authority
      - Controls deployments and troop movement
      - Overall good order and discipline of operation
      - Can make investigations and inquires
    - Commander of national contingent has individual discipline and punishment responsibility (with consultation of force commander)
    - An issue with discipline in coalitions
      - Same offense, different punishment

COALITION OPERATIONS - LEGAL ISSUES

- DISCIPLINE AND PUNISHMENT (Con'd)
  - National Military Criminal Code (UCMJ)
    - A traveling military criminal code (UCMJ)
    - National civilian code for the military
      - No out of country jurisdiction?
  - Host Nation/Status Of Forces Issue
    - Unless an agreement is reached, host nation has jurisdiction over offenses in its country

COALITION OPERATIONS - LEGAL ISSUES

- DISCIPLINE AND PUNISHMENT (Con'd)
  - Following issues resolved?
    - Are camps and headquarters exclusive jurisdiction of coalition?
    - How far into civilian world will coalition military police have arrest powers?
    - Will host nation have any criminal jurisdiction over coalition members?
    - What about "civil law" like taxes?
      - Divided into official capacity/nonofficial capacity
    - Uniforms and flags authorized; if so, where?
    - Carrying weapons? Where? When?
    - Civilian attire? What is appropriate?

COALITION OPERATIONS - LEGAL ISSUES

- **DISCIPLINE AND PUNISHMENT/STATUS OF FORCES ISSUES (Con'd)**

- **Previous examples assumed viable host government**
  - **What is coalition role in a Somalia situation? Haiti? Bosnia?**
  - **Do we enforce local laws?**

COALITION OPERATIONS -LEGAL ISSUES

- RULES OF ENGAGEMENT:
  - Difficult issue because UN has no forces of its own, so left to contributing nations
  - Difficult because use of offensive and defensive force is political issue as well as military
    - Requires coordination between civilian government and military leadership
  - Major issue: acceptable "*degree of risk*" before force is authorized

COALITION OPERATIONS - LEGAL ISSUES

- RULES OF ENGAGEMENT Con'd)
  - Issues:
    - Who speaks for nation in ROE development?
    - Is there a process for local commanders to change if circumstances change?
    - Is it OK for different coalition partners to respond differently to same situation?
    - Who decides if deadly force can be used to protect property?
    - Is collective self defense authorized for all forces?
    - Does "*hostile act/intent*" mean the same for all forces?

COALITION OPERATIONS - LEGAL ISSUES

- LAWS OF ARMED CONFLICT
  - Do they apply?
  - Do all partners recognize them? (US policy is that at the very least that principles will apply in OOTW)
  - What treaties/conventions have coalition partners signed?
    - If Protocol I and II to Geneva Conventions, operational issues will arise!

NATO 50th ANNIVERSARY AIRSHOW

NATO 1949 - 1999 OTAN

PRISTINA, KOSOVO

FREE ADMISSION, FREE PARKING, BOMB SHELTERS AVAILABLE

MARCH 24th 1999, 8:00p.m. until...

AIRCRAFT DEMONSTRATIONS BY:

USAF / RAF / GEAF ...and other NATO members

F-117 / B-52 / F-16 / F-15 / NE-3A / B-2 / TORNADO
HARRIERS / CRUISE MISSLES / A-10 / F/A-18 etc...

DAILY EVENTS

PRECISION BOMBING / SAM SUPPRESSION / STRAFING RUNS
CHIMNEY BOMB DROPS / RUNWAY DEMOLITION / TANK ELIMINATIONS
URBAN RENEWAL / VICTORY THROUGH DEVASTATION

The Face of the Future ?

QUESTIONS????